

## CHAPTER 3 VENDOR APPEALS

**193—3.1(546) Purpose.** This chapter outlines a uniform process for vendor appeals for all boards in the division. The process shall be applicable only when board services are acquired through a formal bidding procedure not handled by the department of general services.

**193—3.2(546) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the board may appeal by filing a written notice of appeal with the board within five days of the date of the award, exclusive of Saturdays, Sundays, and legal state holidays. A written notice may be filed by fax transmission to (515)281-7411. The notice of appeal must be received by the board within the time frame specified to be considered timely. The notice of appeal must state the vendor's complete legal name, street address, telephone number, fax number, and the specific grounds upon which the vendor challenges the board's award, including legal authority, if any. The notice of appeal commences a contested case.

**193—3.3(546) Procedures for vendor appeals.** Each board's procedures for licensee disciplinary hearings shall be applicable, except as provided in these rules.

**3.3(1)** Upon receipt of a notice of vendor appeal, the board shall issue a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. Hearing shall be held within 60 days of the date the notice of appeal was received by the board.

**3.3(2)** All hearings shall be open to the public.

**3.3(3)** Discovery requests, if any, must be served by the parties within ten days of the filing of the notice of appeal. Discovery responses or objections are due at least seven business days prior to hearing.

**3.3(4)** At least three business days prior to the hearing, the parties shall exchange witness and exhibit lists. The parties shall be limited at hearing to the witnesses and exhibits timely disclosed unless the board finds good cause to allow additional witnesses or exhibits at hearing.

**3.3(5)** The hearing, at the option of the board or administrative law judge, may be conducted in person, by telephone, or on the Iowa communications network. When not conducted in person, all exhibits must be delivered to the board or administrative law judge no less than two business days prior to the hearing.

**3.3(6)** Oral proceedings shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand shall bear the costs. Copies of tapes of oral proceedings or transcripts of certified shorthand reporters shall be paid for by the requester.

**3.3(7)** Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay. The filing of the petition for stay does not automatically stay the award. The board may grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the award, the party will suffer substantial and irreparable injury without the stay, and the interest of the public or licensees will not be significantly harmed. A stay may be vacated at any time upon application by any party or the board on its own motion with prior notice to all parties.

**3.3(8)** The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6) and any other relevant procedural documents regardless of their form.

**3.3(9)** The board or administrative law judge may request the parties to submit proposed findings and conclusions or briefs.

**3.3(10)** Any request for continuance must be in writing, specifying the grounds, and filed no later than seven business days prior to hearing.

**3.3(11)** Requests for rehearing shall be made to the board within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision is not necessary to exhaust administrative remedies.

**3.3(12)** Judicial review of the board's final decision may be sought in accordance with the contested case provisions of Iowa Code section 17A.19.

**193—3.4(546) Procedures for board referral to an administrative law judge.** The board, in its discretion, may refer a vendor appeal to the department of inspections and appeals for hearing before a qualified administrative law judge. The hearing procedures shall be substantially the same, but the ruling of an administrative law judge acting as the sole presiding officer shall constitute a proposed decision. Board review of a proposed decision shall be according to Iowa Code subsection 17A.15(2) and this chapter. Nothing in this rule shall prevent the board from hearing a vendor appeal with the assistance of an administrative law judge. This rule merely authorizes an alternative procedure.

**3.4(1)** The proposed decision shall become the final decision of the board 14 days after mailing of the proposed decision, unless prior to that time a party submits an appeal of the proposed decision, or the board seeks review on its own motion.

**3.4(2)** Notice of an appeal for review of a proposed decision or notice of the board's own review shall be mailed to all parties by the board's executive secretary. Within 14 days after mailing of the notice of appeal or the board's review, any party may submit to the board exceptions to and a brief in support of or in opposition to the proposed decision, copies of which shall be mailed by the submitting party to all other parties to the proceeding. The board's executive secretary shall notify the parties if oral argument will be heard and shall specify whether oral argument will be heard in person, by telephone or on the Iowa communications network. The executive secretary shall schedule the board's review of the proposed decision not less than 30 days after mailing of the notice of appeal or the board's own review.

**3.4(3)** Failure to appeal a proposed decision will preclude judicial review unless the board reviews on its own motion.

**3.4(4)** Review of a proposed decision shall be based on the record and limited to the issues raised in the hearing. The issues shall be specified in the notice of appeal of a proposed decision. The party requesting the review shall be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

**3.4(5)** Each party shall have the opportunity to file exceptions and present briefs. The executive secretary may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the executive secretary shall notify all parties of the date, time and location at least ten days in advance.

**3.4(6)** The board shall not receive any additional evidence, unless it grants an application to present additional evidence. Any such application must be filed by a party no less than five business days in advance of oral argument. Additional evidence shall be allowed only upon a showing that it is material to the outcome and that there were good reasons for failure to present it at hearing. If an application to present additional evidence is granted, the board shall order the conditions under which it shall be presented.

**3.4(7)** The board's final decision shall be in writing and it may incorporate all or part of the proposed decision.

These rules are intended to implement Iowa Code section 546.10.

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